

## The complaint

Mr G complained because Barclays Bank UK PLC, trading as Barclaycard, refused to refund him for four payments which he said he didn't authorise.

## What happened

Between 6 and 17 September 2019, four transactions debited Mr G's Barclaycard. The largest two, for £178.90 and £1,208.66, were online payments to an international financial services company. The other two were contactless payments for £12.90 and £13.80, for entertainment.

On 18 September 2019, Mr G sent a secure message to Barclaycard disputing these transactions.

Mr G said Barclaycard didn't process his claim quickly. Barclaycard said it tried to contact Mr G and left several phone messages but couldn't reach him. It closed Mr G's claim, but reopened it after Mr G sent a secure message saying he was unavailable most of the time because of his working hours. Barclaycard sent Mr G a fraud claim form on 13 December.

On 21 January, Barclaycard wrote to Mr G and said it was still waiting for Mr G to return the fraud claim form, and it couldn't investigate until he sent it. It said it had tried several times to phone him but couldn't get through. So it said it couldn't refund him, but apologised for taking a long time to deal with his complaint, and offered Mr G £150 for the delays.

When Mr G returned the fraud claim form, Barclaycard investigated. It said that it had contacted the international financial services company, to which the two largest payments had been sent. That company told Barclaycard that the information it held about the two disputed September 2019 transactions matched an account in Mr G's name.

Barclaycard refused to refund Mr G for all four September 2019 transactions. And it then closed Mr G's account in line with its terms and conditions, saying Mr G no longer met its lending criteria.

Mr G complained to this service.

Our investigator didn't uphold Mr G's complaint. He noted there had been ten days between the first disputed transaction and the second, and it was unlikely that an unknown third party fraudster would have waited so long. The investigator also saw Mr G's previous disputed payments to the international financial services company, and that he'd had a new card each time. The investigator thought it was very unlikely a fraudster could have set up an account in Mr G's name with the company, and then registered each replacement Barclaycard onto that account.

The investigator also considered whether Mr G might have been a victim of identity theft, and that the account with the international financial services company might have been opened fraudulently in Mr G's name. But no evidence indicated that. And although Mr G had

said he'd spoken and written to the international financial services company to say the account in his name was fraudulent, he hadn't provided any evidence to show he'd done this. And undisputed payments had previously gone from Mr G's account to the account in his name with the international financial services company.

So the investigator thought it was most likely that Mr G had carried out the transactions himself.

Mr G didn't agree. He said it was offensive to be accused of making the payments himself, and said he hadn't made them. Mr G said his main objective now was to get the late payments taken off his credit file, and not to be accused of being fraudulent with a CIFAS marker against his name. CIFAS is a fraud prevention organisation.

Mr G also said that Barclaycard had told him not to make payments until after his complaint was finalised.

The investigator told Mr G that lenders have to record payment history accurately. And Barclaycard had written to Mr G on 12 March 2020, saying that as he'd been held liable for the disputed transactions, he'd have to make repayments. So the investigator said he wouldn't ask Barclaycard to make any changes to Mr G's credit file. The investigator said that as Mr G hadn't mentioned CIFAS in his original complaint, he'd have to raise this first with Barclaycard.

Mr G asked for an ombudsman decision.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

First, I'll set out what I can and can't look at. This service is governed by rules, one of which says that complaints have to be raised with the financial organisation before a customer can bring it to us. So I can't consider any complaint from Mr G about a CIFAS marker. He didn't raise this in his initial complaint to this service, and I've seen nothing to indicate he's complained about it to Barclaycard. If he wants to proceed with that complaint, he'll have to complain to Barclaycard and if necessary to this service after that. Any issue of a CIFAS marker is separate from the issues about the disputed transactions, and credit file, and doesn't impact my final decision about those matters.

The complaints I can consider are Mr G's complaint that he didn't carry out the four disputed transactions between 6 and 17 September 2019, and that he wants Barclaycard to remove what it's recorded on his credit file.

#### *Disputed transactions between 6 and 17 September 2019*

The relevant regulations for disputed transactions taking place in September 2019 are the Payment Services Regulations 2017. These say that the payment service provider (here, Barclaycard) must show the payment was authenticated. Barclaycard sent us the electronic proof, from which I can see that the two disputed transactions to the international financial services company were authenticated online, and the two disputed transactions for entertainment spend were authenticated by contactless use of Mr G's genuine card. So all four disputed payments were authenticated.

The next stage is to look at whether the card holder authorised the payments. The Payment Services Regulations 2017 provide for the Consumer Credit Act (CCA) 1974 to apply when credit is involved, as it is here. The relevant section of the Consumer Credit Act is Section

83. A consumer is only liable for loss arising from a credit facility if they, or someone acting as their agent, used the facility.

So I've considered whether it's more likely than not that Mr G authorised the four disputed transactions.

The pattern of the disputed transactions means it's unlikely to have been a fraudster who carried them out. After the first transaction for £178.90 on 6 September 2019, there was then a gap until 16 September, when the two smaller entertainment transactions took place. The largest transaction, for £1,208.66, didn't take place until 17 September. This just isn't a likely pattern for any fraudster, who would have wanted to maximise their spend before the cardholder could find out and get the account blocked.

I've also looked at the history of payments on Mr G's account, to the international financial services company. Mr G made undisputed payments to that company from his Barclays personal account on 15 May 2018 and 12 July 2018.

And I've looked at the information which the international financial services company supplied to Barclaycard about the two largest September 2019 payments. It's provided details of the account to which they went. And it's in Mr G's name, with other personal details which match those which Mr G supplied to us when he brought his complaint. So those two payments went to an account with Mr G's details.

Mr G told our investigator that he'd written to the international financial services company, to tell it that he'd been a victim of identity fraud and that account was fraudulent. But Mr G didn't provide us with any evidence that he'd done so. Nor did he provide any evidence to indicate that identity theft was likely – for example what identification documents he'd lost, when, details of reporting such losses, whether he suspected anyone, and how anyone could have obtained enough personal information to open the account with the international financial services company in Mr G's name. Without any such evidence, I can't reasonably conclude that the recipient account with the international financial services company was fraudulent.

Taking all these factors into account, I consider the most likely explanation for the withdrawals is that Mr G carried them out himself. So I don't require Barclaycard to refund him.

#### *Mr G's credit file*

Mr G is particularly keen for his credit file to be changed. Lenders have to report accurate information. Mr G says that Barclaycard told him not to pay until his complaint was resolved, and that this was why he didn't pay, which led to the credit file issue.

So I have looked at the documents to check whether or not Barclaycard did tell Mr G not to pay. I've seen Barclaycard's final response letter dated 12 March 2020. This says:

*"Our Investigations Team have concluded the transactions for [name to which the disputed payments were sent] are genuine. As such you are responsible for these and are expected to make payments to clear the amounts, in line with the terms and conditions of your lending agreement.... Should you find yourself unable to make payments or have difficulty making payments, please let us know so we can discuss your option. Failure to make the required payments I'm afraid may result in further action being taken."*

Barclaycard sent a further letter to Mr G on 16 October 2020 which confirmed this position. It repeated its previous decisions that Mr G was liable for the transactions, that he was also

liable for the interest which had accrued, and that Barclaycard wouldn't amend Mr G's credit file, because he knew he had to pay.

So I find that by 12 March 2020 at the latest, Mr G knew that he had to pay for the transactions and interest. Like all lenders, Barclaycard has to submit accurate information about Mr G's account, to the credit file companies. And it was accurate that Mr G's Barclaycard hadn't been paid. So I do not order Barclaycard to make any changes to the information it sent to the credit file companies.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 24 April 2021.

Belinda Knight  
**Ombudsman**